

**Tuesday, July 13, 2010**

The Board met at its offices at 450 N Street, Sacramento, at 10:00 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Ms. Alby and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

### **SPECIAL PRESENTATION**

Ms. Yee, on behalf of the Board, presented and read into the record a resolution of appreciation to the Franchise Tax Board (FTB) for providing a safe and supportive work environment to BOE employees who were displaced in the fall of 2007. Anne Miller, Chief, Filing Division, FTB, received the resolution on behalf of the FTB and made favorable comments regarding the experience of accommodating BOE staff at the FTB facility. ([Exhibit 7.1.](#))

Exhibits to these minutes are incorporated by reference.

The Board recessed at 10:05 a.m. and reconvened at 11:03 a.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARING**

Hank Feenstra and Catherine Feenstra, 464316

2001, \$14,041.00 Claim for Refund

2002, \$22,838.00 Claim for Refund

2003, \$14,842.00 Claim for Refund

2001, \$29,463.00 Claim for Refund

For Appellant:

Hank Feenstra, Taxpayer

Michael A. Thompson, Attorney

Gary Galbraith, Witness

For Franchise Tax Board:

Jason Riley, Tax Counsel

Bill Hilson, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Board has jurisdiction to hear and decide appellants' appeal of respondent's disallowance of research and development (R&D) tax credits claimed for tax year 2004.

Whether appellants have met their burden of proof to substantiate their fixed-base percentage calculation for purposes of determining the allowable amount of R&D credit.

Whether appellants have presented evidence sufficient to demonstrate that the claimed activities constituted "qualified research" and to prove the amount of qualified research expenditures pursuant to Internal Revenue Code section 41.

Appellant's Exhibit: PowerPoint Presentation ([Exhibit 7.2](#))

Respondent's Exhibit: Miscellaneous Documents ([Exhibit 7.3](#))

Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

The Board recessed at 12:39 p.m. and reconvened at 1:37 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

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**LEGAL APPEALS MATTERS, ADJUDICATORY**

Ocean Palace, Inc., 425058 (GH)

Speakers: Peter K. Chau, Taxpayer  
Yvonne L. Chau, Taxpayer

10-1-03 to 9-30-06, \$29,508.48 Tax, \$0.00 Negligence Penalty

Considered by the Board: July 21, 2009

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Yee unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Felix Lin and Betty Lin, 477812

2003, \$78,878.00 Assessment

Linus Upson, 477856

2003, \$67,595.00 Assessment

Rafael Weinstein, 477868

2003, \$40,846.00 Assessment

For Appellants:

Felix Lin, Taxpayer  
Linus Upson, Taxpayer  
Rafael Weinstein, Taxpayer  
Sheila Joyce Kellerman, Representative  
Ann Hodges, Tax Counsel  
Bill Hilson, Tax Counsel

For Franchise Tax Board:

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants are entitled to exclude 50 percent of the gain from the sale of AvantGo stock because the corporation met the requirements to be considered qualified small business stock.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 7.4](#))

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

Mary Shamouel and Edmond Shamouel, 475296

2002, \$11,637.00 Claim for Refund

For Appellant:

No Appearance

For Franchise Tax Board:

Suzanne Small, Tax Counsel  
Marguerite Mosnier, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants' refund claim is barred by the statute of limitations.

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Amy Kelly, Counsel, Legal Appeals Division, Legal Department, stated for the record that the Franchise Tax Board has dismissed the appeal with respect to Mary Shamouel and is granting the claim for refund with respect to her on the basis of financial disability for her community property share of the refund claim. The remaining issue in this appeal is whether the claim for refund was timely filed with respect to Edmond Shamouel.

Action: Upon motion of Mr. Horton, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Kevin E. Gertner and Berta Martinez, 476333

2003, \$67,844.00 Assessment

For Appellant:

Kevin E. Gertner, Taxpayer

For Franchise Tax Board:

Natasha Page, Tax Counsel

Maria Brosterhous, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether respondent properly determined that the subject sale of appellants' stock occurred in 2002 when appellants were residents of California and thus gain on the sale was taxable by California.

If the gain in issue is properly sourced to California, whether appellants were taxable on that gain in 2002 so that respondent should have issued a proposed assessment of additional tax for 2002, rather than 2003.

Action: Upon motion of Mr. Horton, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

### **SPECIAL ANNOUNCEMENT**

Ms. Yee expressed her sympathy for the loss of Senator Dave Cox, who passed away peacefully in his home today at age 72. He is survived by his wife of 44 years, Maggie; three daughters, Cathleen, Margo and Sarah; six grandchildren; and, his beloved dog, Rudy.

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the meeting will adjourn at its conclusion in memory of the late Senator Dave Cox.

### **TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

#### **LOCAL TAX REALLOCATION MATTERS**

Cities of Anaheim, Carlsbad, Cupertino, El Segundo, Fresno, Hayward, Irvine, Laguna Beach, Los Angeles, Redwood City, Sacramento, San Diego, San Jose, San Leandro, Santa Ana, Torrance, Union City, Walnut Creek, and County of Sacramento, 492073, 492075, 492329, 493248, 493264, 494436, 494438, 494459, 495390, 495391, 495733, 495734, 495774, 495775, 496077, 496080, 496315, 496316, 496951, 504845, 504846,

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505121, 505125, 506449, 506450, 507277, 509321, 509322, 509700, 510244, 510246, 510466, 510488, 510489

Speaker: Robin Sturdivant, The HdL Companies, representing 174 agencies

Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board deferred consideration of the matter to later in the day.

The Board recessed at 3:19 p.m. and reconvened at 3:22 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Gerber Marital Trust (Non-Exempt), 513082

2007, \$9,398.55 Claim for Refund

Gerber Marital Trust (Exempt), 513083

2007, \$17,372.86 Claim for Refund

Gerber Marital Trust (Exempt), 513084

2007, \$190.36 Claim for Refund

For Appellant:

Janet L. Everson, Attorney

For Franchise Tax Board:

Jane Perez, Tax Counsel

Craig Scott, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have shown that they had reasonable cause for late payment of their tax liabilities for 2007.

Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board. The Board specifically requested that the appellant provide the schedule initially prepared to calculate appellants' stock bases and a statement under penalty of perjury by the CPA describing the analysis (if any) of the pertinent tax statutes that led to both errors in the first analysis and the resulting underestimation of tax liabilities.

The Board recessed at 4:02 p.m. and reconvened at 4:10 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

James N. Smith, 510914

Action: This matter is postponed to September 2010.

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Clovus M. Sykes, 512493

2006, \$101.00 Tax, \$125.25 Penalties

For Appellant:

For Franchise Tax Board:

Clovus M. Sykes, Taxpayer

Jane Perez, Tax Counsel

Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether appellant has demonstrated error in the underlying tax assessment.

Whether appellant has shown reasonable cause for the abatement of the notice and demand penalty and/or the late filing penalty.

Whether the Board should impose a frivolous appeal penalty.

Appellant's Exhibit: Miscellaneous Documents ([Exhibit 7.5](#))

Action: Upon motion of Ms. Mandel, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board submitted the appeal for decision.

**LEGAL APPEALS MATTERS, CONSENT**

The Board deferred consideration of the following matters: *Smoke Rings, Inc.*, 391126; *Rami Michell Darghalli*, 402639; *Rami Michell Darghalli*; and, *Faiz Mohamed Munassar*, 404172.

With respect to the Legal Appeals Matters Consent Agenda, upon a single motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Ken Macey's, Inc., 436176 (KH)

4-1-04 to 3-31-07, \$201,881.91 Tax, \$20,188.18 Negligence Penalty

Action: Redetermine as recommended by the Appeals Division.

James Paul Moon, Sr., 441033 (EH)

7-1-05 to 9-30-06, \$104,574.49 Tax, \$13,895.20 Late Payment Penalties

Action: Redetermine as recommended by the Appeals Division.

Issa I. Salto, 404555 (KH)

Leidia S. Salto, 416850 (KH)

4-1-03 to 12-06-05, \$70,333.42 Tax, \$11,917.44 Penalty

Action: Redetermine as recommended by the Appeals Division.

Lock Doctors Service Center, LLC, 389557 (OH)

7-1-09 to 12-31-05, \$12,852.07 Tax, \$733.08 Failure to File Penalty, \$733.08 Amnesty double Failure to File Penalty

Action: Redetermine as recommended by the Appeals Division.

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Smoke Rings, Inc., 391126 (AR)  
Rami Michell Darghalli, 402639 (AR)  
Rami Michell Darghalli and Faiz Mohamed Munassar, 404172 (AR)  
Action: The Board took no action.

Mr. Horton directed staff to track and accelerate the collection process on accounts that have a significant liability.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, CONSENT**

With respect to the Corporate Franchise and Personal Income Tax Matters Consent Agenda, upon a single motion of Mr. Horton, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Adrian L. Castro and Coral A. Castro, 510834  
2005, \$5,244.00 Assessment  
Action: Sustain the action of the Franchise Tax Board.

Jason M. Fox, 479782  
2005, \$1,799.00 Tax  
2006, \$4,755.00 Tax  
Action: Sustain the action of the Franchise Tax Board.

Andrew Charles Green, 509557  
2006, \$3,844.00 Tax, \$961.00 Late Filing Penalty  
Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Mercedes Castro and Raymond Castro, 487983  
2001, Innocent Spouse Relief  
2002, Innocent Spouse Relief  
2004, Innocent Spouse Relief  
Action: Reverse the action of the Franchise Tax Board.

Alpha Healthcare Management Services, LLC, 489514  
2006, \$1,148.65 Claim for Refund  
2007, \$1,030.44 Claim for Refund  
Action: Sustain the action of the Franchise Tax Board.

Robert K. Boxer, 474201  
1998, \$3,491.58 Claim for Refund  
2001, \$1,414.44 Claim for Refund  
2002, \$188.84 Claim for Refund  
2003, \$23.00 Claim for Refund  
Action: Sustain the action of the Franchise Tax Board.

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John Buerger, 486588

2006, \$9,769.00 Tax, \$2,442.25 Late Filing Penalty, \$2,632.25 Notice and Demand Penalty, \$119.00 Filing Enforcement Fee

Action: Sustain the action of the Franchise Tax Board and impose a \$5,000.00 frivolous appeal penalty.

Donald G. Candy and Adrienne R. Candy, 478615

2004, \$13,093.00 Claim for Refund

2006, \$4,857.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Cassel Ridge, Inc., 513552

2006, \$403.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Ana S. Castro-Dominguez, 432922

2006, \$450.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

M. Dadashzadeh and Z. Rezvanpour, 474209

2004, \$1,259.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Robert A. Forslund, 496775

2006, \$4,439.00 Tax, \$1,109.75 Late Filing Penalty, \$1,109.75 Notice and Demand Penalty, \$119.00 Filing Enforcement Fee

Action: Modify the action as conceded to by the Franchise Tax Board, otherwise sustain the action and impose a \$750.00 frivolous appeal penalty.

Otto Galindo, 492942

2005, \$921.00 Tax

Action: Modify the action as conceded to by the Franchise Tax Board, otherwise sustain the action.

Mark S. Harker and Suzanne K. Harker, 464522

2005, \$16,607.00 Tax

Action: Modify the action as conceded to by the Franchise Tax Board, otherwise sustain the action.

Imperial, Inc., 472648

2003, \$18,395.00 Assessment

Imperial, Inc. (C SGNF), 477927

2003, \$115,742.00 Assessment

Action: Modify the action as conceded to by the Franchise Tax Board, otherwise sustain the action.

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Alex Keyhan, 473084

2004, \$798.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Diana Marie Lulay, 506785

2006, \$329.00 Tax, \$100.00 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Gina Molina, 458831

2007, \$1,050.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Brad Nightengale, 467042

2005, \$161.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Terry W. Oesau, 462013

2006, \$1,389.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Elly B. Pardo, 505571

2002, \$1,763.00 Tax, \$85.45 Proposed Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Evelyn Parker, 472898

2002, \$2,847.62 Tax, \$100.38 Proposed Post-Amnesty Penalty

Action: Sustain the action of the Franchise Tax Board.

Eric Paul, 461392

2005, \$462.00 Tax, \$115.50 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board and impose a \$750.00 frivolous appeal penalty.

Purdue Regency Apartments, 495740

2007, \$150.00 Claim for Refund

Action: Sustain the action of the Franchise Tax Board.

Sandra L. Robbe, 327432

1995, Innocent Spouse Relief

2002, Innocent Spouse Relief

Action: Reverse the action of the Franchise Tax Board as to the 1995 tax year, and modify the action of the Franchise Tax Board as to the 2002 tax year.



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John W. Rutherford and Carol J. Rutherford, 504724

1994, \$5,505.00 Tax, \$1,331.25 Late Filing Penalty

1995, \$3,008.00 Tax, \$100.00 Late Filing Penalty

1996, \$1,913.00 Tax, \$399.25 Late Filing Penalty

Action: Sustain the action of the Franchise Tax Board.

Louis M. Senno, 490330

2005, \$480.53 Assessment

Action: Sustain the action of the Franchise Tax Board.

Mychal T. Young, 512542

2007, \$665.00 Tax

Action: Sustain the action of the Franchise Tax Board.

Nabil E. Zaki and Wedad T. Zaki, 492713

2005, \$2,991.00 Tax, \$598.20 Accuracy Related Penalty

Action: Modify the action as conceded to by the Franchise Tax Board, otherwise sustain the action.

Imelda Zorrilla, 459868

2006, \$930.00 Assessment

Action: Sustain the action of the Franchise Tax Board.

Konstantine Karavakis, 478167

2004, \$38,738.00 Tax

Action: Deny the petition for rehearing.

Connie S. Ray, 418262

2003, \$1,031.35 Tax

Action: Deny the petition for rehearing.

**HOMEOWNER AND RENTER PROPERTY TAX ASSISTANCE MATTERS, CONSENT**

With respect to the Homeowner and Renter Property Tax Assistance Matters Consent Agenda, upon a single motion of Mr. Horton, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Sarah Amira, 444448

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Kathleen Ammaccapane, 437564

2007, \$290.00

Action: Sustain the action of the Franchise Tax Board.

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Brice Anderson, 447787

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Judith Annette Blumberg, 442463

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Dior B. Boyd, 472991

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Phillip Cabaong, 445399

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Georgiann H. Cain, 443184

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Jessica Clifton, 422645

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Kristen Marie Conger, 447831

2006, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Rafik R. Hanna, 445643

2007, \$1.00 or more

Action: Sustain the action of the Franchise Tax Board.

Deena Johnson, 426217

2007, \$347.50

Action: Sustain the action of the Franchise Tax Board.

Atanacio Mandujano, 443063

2007, \$1 or more

Action: Sustain the action of the Franchise Tax Board.

Sandra K. Morrill, 444284

2006, \$347.50

Action: Sustain the action of the Franchise Tax Board.

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Rogelio Padilla, 426112

2006, \$98.40

Action: Sustain the action of the Franchise Tax Board.

**SALES AND USE TAX MATTERS, REDETERMINATIONS, AND DENIALS OF CLAIMS FOR REFUND, CONSENT**

With respect to the Sales and Use Tax Matters, Redeterminations, and Denials of Claims for Refund, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Nissin Foods Co., Inc., 493761 (AS)

4-1-04 to 3-31-07, \$116,117.81

Action: Approve the redetermination as recommended by staff.

Arrow Electronics, Inc., 441028 (OH)

4-1-00 to 3-31-03, \$1,123,994.60

Action: Approve the redetermination as recommended by staff.

Kimberly-Clark Global Sales, Inc., 489196 (OH)

10-15-02 to 6-30-05, \$133,678.48

Action: Approve the redetermination as recommended by staff.

Mercedes-Benz Credit Corp., 316758 (OH)

4-1-98 to 11-30-01, \$352,028.00

Action: Approve the denial of claim for refund as recommended by staff.

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

With respect to the Sales and Use Tax Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Mr. Horton, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Trammo Petroleum, Inc., 494777 (OH)

10-1-03 to 9-30-06, \$2,396,584.78

Action: Approve the credit and cancellation as recommended by staff.

Amcobeauty Corporation, 529780 (FH)

1-1-09 to 6-30-09, \$150,240.47

Action: Approve the credit and cancellation as recommended by staff.

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Hoop Retail Stores, LLC, 529654 (OH)

1-1-05 to 3-25-08, \$1,163,072.42

Action: Approve the credit and cancellation as recommended by staff.

Pacific Coast Gas Plus, Inc., 472385 (AC)

4-1-05 to 3-31-08, \$205,292.59

Action: Approve the credit and cancellation as recommended by staff.

L.A. Unified School Dist., 460524 (AS)

4-1-05 to 3-31-08, \$798,241.78

Action: Approve the refund as recommended by staff.

Jacobs Engineering Group, Inc., 493303 (AP)

1-1-09 to 3-31-09, \$103,991.48

Action: Approve the refund as recommended by staff.

Charlotte Russe, Inc., 480624 (FH)

12-25-05 to 3-28-09, \$498,191.04

Action: Approve the refund as recommended by staff.

Mercedes-Benz Credit Corp., 316758 (OH)

4-1-98 to 11-30-01, \$3,153,535.94

Action: Approve the refund as recommended by staff.

Mercedes-Benz USA, LLC, 528907 (KH)

1-12-10 to 3-25-10, \$462,253.00

Action: Approve the refund as recommended by staff.

U S Foodservice, Inc., 484238 (UT)

12-14-05 to 12-14-05, \$462,960.14

Action: Approve the refund as recommended by staff.

Northrop Grumman Systems Corp., 476959 (AS)

1-1-02 to 12-31-07, \$610,411.60

Action: Approve the refund as recommended by staff.

Arrowhead Central Credit Union, 513358 (EH)

4-1-09 to 9-30-09, \$639,352.00

Action: Approve the refund as recommended by staff.

Americredit Financial Service, Inc., 514948 (OH)

7-1-09 to 12-31-09, \$2,324,837.00

Action: Approve the refund as recommended by staff.

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Lobel Financial Corporation, 515788 (EA)

10-01-09 to 12-31-09, \$109,649.00

Action: Approve the refund as recommended by staff.

Rockwell Automation, Inc., 530273 (OH)

4-1-02 to 3-31-06, \$115,241.86

Action: Approve the refund as recommended by staff.

Bay Federal Credit Union, 488866 (GH)

10-1-08 to 6-30-09, \$254,893.99

Action: Approve the refund as recommended by staff.

A-L Financial Corp., 514994 (EA)

10-1-09 to 12-31-09, \$125,084.00

Action: Approve the refund as recommended by staff.

Global Fine Arts, Inc., 528581 (AR)

7-1-05 to 12-31-08, \$272,189.50

Action: Approve the refund as recommended by staff.

#### **SPECIAL TAXES MATTERS, DENIAL OF CLAIM FOR REFUND, CONSENT**

With respect to the Special Taxes Matters, Denial of Claim for Refund, Consent Agenda, upon a single motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following order:

Chevron U.S.A., Inc., 472535 (MT)

1-1-03 to 10-31-04, \$426,603.00

Action: Approve the denial of claim for refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

#### **SPECIAL TAXES MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, CONSENT**

With respect to the Special Taxes Matters, Credits, Cancellations and Refunds, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board made the following orders:

Chevron U.S.A., Inc., 332805 (MT)

1-1-03 to 4-30-03, \$339,719.20

Action: Approve the refund as recommended by staff. Ms. Mandel not participating in accordance with Government Code section 7.9.

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Thrifty Payless, Inc., 379479 (ET)

10-1-06 to 10-31-06, \$273,677.00

Action: Approve the refund as recommended by staff.

**LEGAL APPEALS MATTER, ADJUDICATORY**

Ocean Palace, Inc., 425058 (GH) (continued)

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

**CORPORATE FRANCHISE AND PERSONAL INCOME TAX MATTERS, ADJUDICATORY**

Christopher D. Harper, 439956

2005, \$2,209.25 Claim for Refund

Considered by the Board: November 17, 2009

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Ms. Steel moved to reverse the action of the Franchise Tax Board. The motion was seconded by Ms. Alby but failed to carry, Ms. Alby and Ms. Steel voting yes, Ms. Yee, Mr. Horton and Ms. Mandel voting no.

Upon motion of Ms. Mandel, seconded by Mr. Horton and duly carried, Ms. Yee, Mr. Horton and Ms. Mandel voting yes, Ms. Alby and Ms. Steel voting no, the Board adopted a decision sustaining the action of the Franchise Tax Board.

Manjusha P. Kulkarni and Shailendra N. Halbe, 440899

2002, \$1,255.00 Claim for Refund

2003, \$756.00 Claim for Refund

Considered by the Board: March 23, 2010

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board adopted a decision sustaining the action of the Franchise Tax Board as to the 2002 tax year and modifying the action as conceded by the Franchise Tax Board as to the 2003 tax year, otherwise sustaining the action.

**SALES AND USE TAX MATTERS, DENIAL OF CLAIMS FOR REFUND, ADJUDICATORY**

Michael Brian McCullough, 448949 (EA)

7-1-00 to 9-30-03, \$277,359.68

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the denial of claim for refund as recommended by staff.

Tuesday, July 13, 2010

**SALES AND USE TAX MATTERS, CREDITS, CANCELLATIONS AND REFUNDS, ADJUDICATORY**

Wells Fargo Auto Finance, Inc., 421052 (BH)

1-1-06 to 12-31-06, \$342,165.32

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

American Airlines, Inc., 256349 (OH)

1-1-01 to 12-31-04, \$777,687.55

Considered by the Board: Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the refund as recommended by staff.

**TAX PROGRAM NONAPPEARANCE MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE****OFFERS-IN-COMPROMISE RECOMMENDATIONS**

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Charlene Cruff*; *R & R Greene Living Trust*; *Lloyd R. Jensen and Wilma Jensen*; *Stephen Swartz*; *Mary Jean Roscoe*; *Curtiss Scott Pratt*; *John Cambin Nance*; and, *Tien T. Nguyen*; as recommended by staff.

Ms. Yee directed staff to explore means to expedite the OIC process for underground storage tank liabilities in an effort to minimize exposure.

**LOCAL TAX REALLOCATION MATTERS (CONTINUED)**

Cities of Anaheim, Carlsbad, Cupertino, El Segundo, Fresno, Hayward, Irvine, Laguna Beach, Los Angeles, Redwood City, Sacramento, San Diego, San Jose, San Leandro, Santa Ana, Torrance, Union City, Walnut Creek, and County of Sacramento, 492073, 492075, 492329, 493248, 493264, 494436, 494438, 494459, 495390, 495391, 495733, 495734, 495774, 495775, 496077, 496080, 496315, 496316, 496951, 504845, 504846, 505121, 505125, 506449, 506450, 507277, 509321, 509322, 509700, 510244, 510246, 510466, 510488, 510489

Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and duly carried, Ms. Yee, Mr. Horton, Ms. Steel and Ms. Mandel voting yes, Ms. Alby voting no, the Board ordered that the petitions be denied as recommended by the Appeals Division.

Tuesday, July 13, 2010

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARINGS HELD JULY 13, 2010**

Hank Feenstra and Catherine Feenstra, 464316

Final Action: Ms. Alby moved to reverse the action of the Franchise Tax Board. The motion was seconded by Ms. Steel. The motion was withdrawn.

Upon motion of Ms. Steel, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board. The Board requested the appellant to do the following:

(1) Identify the claimed qualifying activity or activities that were not performed pursuant to Osmose's direction or guidance.

(2) Provide the documentation to support the actual research performed (i.e., activity or activities involving the process of experimentation) resulting in a brand new part or process.

(3) Provide argument, authority, and documentation supporting the contention raised at the oral hearing that appellant is a "start up company" for purposes of Internal Revenue Code (IRC) section 41(c)(3)(B), and that it meets the requirements of IRC section 41(c)(3)(B)(i). Appellant should also provide its calculation demonstrating its purported fixed based percentage under IRC section 41(c)(3)(B)(i).

(4) Provide any Internal Revenue Service audit reports during the years 2001 through 2004 showing detailed findings, including explanations of any changes related to the research and development credit.

Felix Lin and Betty Lin, 477812

Linus Upson, 477856

Rafael Weinstein, 477868

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, the Franchise Tax Board 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board. The Board specifically requested the appellant to provide monthly payroll information (including the California portion of the payroll) of AvantGo, Inc. for months in 2001 and 2002 in which the corporation was not making severance payments to its terminated employees.

Kevin E. Gertner and Berta Martinez, 476333

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.



**Tuesday, July 13, 2010**

Clovus M. Sykes, 512493

Final Action: Upon motion of Ms. Alby, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$750.00 frivolous appeal penalty.

The Board adjourned at 5:37 p.m.

*The foregoing minutes are adopted by the Board on November 18, 2010.*

Note: The following matter was removed from the calendar prior to the meeting: *Debasish Banerjee and Radhika Banerjee, 393736.*

Wednesday, July 14, 2010

The Board met at its offices 450 N Street, Sacramento, at 9:36 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Ms. Alby and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

**SALES AND USE TAX APPEALS HEARINGS**

Oracle Corporation, 217113 (BH)

1-1-96 to 12-31-98, \$522,309.14 Tax, \$342,040.97 Negligence Penalty

For Petitioner:

Wayne Sekigehama, Taxpayer

Rob Punzo, Taxpayer

Eric Miethke, Attorney

For Sales and Use Tax Department:

Chris Schutz, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether further adjustments are warranted to the disallowed claimed nontaxable sales.

Whether further adjustments are warranted to the audited amount of purchases subject to use tax.

Whether petitioner is liable for use tax with respect to its purchases from Propeller during the second quarter of 1997.

Whether petitioner was negligent.

Whether relief of interest is warranted.

Action: Upon motion of Ms. Mandel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 11:30 a.m. and reconvened at 11:42 a.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Robert Charles Herzog, 381897 (EH)

4-1-01 to 3-31-05, \$35,950.86 Tax, \$3,595.09 Negligence Penalty, \$18.05 Late Payment Penalty

For Petitioner:

Abe Golomb, Representative

For Sales and Use Tax Department:

Chris Schutz, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is personally liable as a responsible person under Revenue and Taxation Code section 6829 for the unpaid liabilities of Herzog Enterprises, Inc., dba Aloha Auto Center (HEI).

Whether the liability assessed against petitioner is excessive.

Whether the negligence penalty was properly imposed on HEI.

Whether petitioner has established reasonable cause sufficient to relieve the late-payment penalty assessed against the corporation.

Action: Upon motion of Mr. Horton, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Wednesday, July 14, 2010

Commodore Cruises and Events, Inc., 424031, 514975 (CH)

1-1-04 to 12-31-06, \$162,450.21 Tax, \$16,245.04 Negligence Penalty

For Petitioner: Ward Proescher, Taxpayer  
Morgan Proescher, Taxpayer  
Bill Shine, Representative

For Sales and Use Tax Department: Cary Huxsoll, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the audited amount of unreported mandatory gratuity charges and food and beverage sales.

Whether petitioner was negligent.

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

The Board recessed at 12:31 p.m. and reconvened at 1:35 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

NCMG, Inc., 386871 (CH)

1-1-03 to 12-31-05, \$23,385.68 Tax

For Petitioner: Shun Huang (Jason) Sheng, Taxpayer  
Darren Berger, Representative

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted for remnants and for an increase in ending inventory.

Whether petitioner is liable for the use tax on the cost of fixtures and marble and granite displayed in the showroom.

Whether petitioner should be relieved of the tax on remnants that were not installed in construction contracts because it relied on advice from a prior audit of its predecessor.

Action: Upon motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be returned to the district for a reaudit.

J&E Holdings, LLC, 430091 (BH)

1-1-04 to 12-31-06, \$3,315.01 Tax, \$0.00 Negligence Penalty

For Petitioner: Gerard Darian, Taxpayer  
Butch Kruse, Representative

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether further adjustments are warranted to the understatement of reported taxable sales.

Wednesday, July 14, 2010

Action: Upon motion of Mr. Horton, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Mohammad Raouf, 464805 (JH)

10-1-04 to 9-30-07, \$15,903.76 Tax, \$1,604.23 Negligence Penalty

For Petitioner: Mohammad Raouf, Taxpayer

For Sales and Use Tax Department: Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether adjustments are warranted to the unreported taxable sales.

Whether petitioner was negligent.

Action: Upon motion of Mr. Horton, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 3:43 p.m. and reconvened at 3:53 p.m. with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Kerry Michael Lawrence, 439774 (KH)

Robert A. Schimpf, 437280 (KH)

10-1-01 to 10-31-02, \$21,853.82 Tax, \$2,302.60 Penalties

For Petitioner: Kerry Lawrence, Taxpayer

Robert Schimpf, Taxpayer

For Sales and Use Tax Department: Andrew Kwee, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner is personally liable as a responsible person for the unpaid liabilities of Electrical Specialty Parts Network, Inc. (ESPN), for the period October 1, 2001, through October 31, 2002, pursuant to Revenue and Taxation Code section 6829.

Whether petitioner has established reasonable cause sufficient to relieve the late payment penalties and finality penalty originally assessed against ESPN for the period October 1, 2001, through October 31, 2002.

Whether interest accruing on the tax liability should be relieved.

Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

Propeller Portable Computer Products, Inc., 158412 (OH)

4-1-97 to 6-30-01, \$345,657.51 Tax, \$0.00 Penalty

For Petitioner: Appearance Waived

For Sales and Use Tax Department: Chris Schutz, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether petitioner was a retailer engaged in business in California during the second quarter of 1997.

Whether adjustments are warranted because the California purchasers are required to pay use tax.

**Wednesday, July 14, 2010**

Action: Upon motion of Mr. Horton, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as to the amount at issue.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
JULY 14, 2010**

Oracle Corporation, 217113 (BH)

Final Action: Upon motion of Mr. Horton, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board. The Board directed staff to work with the taxpayer to verify third party verification efforts with respect to XYZ Letters, FOB information, title clause, etc.

Robert Charles Herzog, 381897 (EH)

Jeff Angeja, Tax Counsel, Appeals Division, Legal Department, stated for the record that the estimated sales based on the missing ROS forms should be 24 rather than 26 and clarified that staff's recommendation includes a reduction for those two sales.

Final Action: Upon motion of Ms. Yee, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

J&E Holdings, LLC, 430091 (BH)

Final Action: Upon motion of Ms. Steel, seconded by Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be partially granted by lowering the taxable sales ratio for 2005 and 2006 to 33.6 percent while keeping staff's audited ratio for 2004.

Ms. Yee directed staff to inform the petitioner of the Offer in Compromise Program or consider a payment plan.

Mohammad Raouf, 464805 (JH)

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Ms. Yee directed staff to inform the petitioner of the Offer in Compromise Program or consider a payment plan.

Ms. Steel directed staff to educate small businesses with respect to the self consumption.

**Wednesday, July 14, 2010**

Kerry Michael Lawrence, 439774 (KH)

Robert A. Schimpf, 437280 (KH)

Final Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision, granting the petitioner 30 days to file supporting documents, the Department 30 days to respond, and the Appeals Division 30 days thereafter to review the parties' submissions and provide its recommendation to the Board.

The Board adjourned at 5:26 p.m.

*The foregoing minutes are adopted by the Board on November 18, 2010.*

Note: The following matter was removed from the calendar prior to the meeting: *Jaswant S. Sra, 437185 (UT)*.

**Thursday, July 15, 2010**

The Board met at its offices at 450 N Street, Sacramento, at 9:37 a.m., with Ms. Yee, Chairwoman, Mr. Horton, Vice Chair, Ms. Alby and Ms. Steel present, Ms. Mandel present on behalf of Mr. Chiang in accordance with Government Code section 7.9.

## **SALES AND USE TAX APPEALS HEARING**

Eric Thomas Welch, 325518 (KH)

Action: Upon motion of Ms. Yee and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board postponed the matter to August 2010.

## **CHIEF COUNSEL MATTERS**

### **RULEMAKING**

#### **Section 100 Changes**

#### **Proposed Regulation 1598, *Motor Vehicle and Aircraft Fuels* (MVF)**

Bradley Heller, Tax Counsel, Tax and Fee Program Division, Legal Department, made introductory remarks regarding staff's request for authorization to complete Rule 100 changes to incorporate the provisions of Revenue and Taxation Code section 6357.7. The provisions provide a partial exemption from the sales and use of motor vehicle fuel, operative July 1, 2010 ([Exhibit 7.6](#)).

Action: Upon motion of Mr. Horton, seconded by Ms. Mandel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the section 100 changes to Regulation 1598, *Motor Vehicle and Aircraft Fuels*, as recommended by staff.

Ms. Steel directed staff to ensure taxpayers are educated on the rate changes since diesel fuel tax rates are effective July 1, 2011.

Exhibits to these minutes are incorporated by reference.

## **ADMINISTRATIVE SESSION**

### **ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Steel, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California ([Exhibit 7.7](#)).

Maria (Sandy) A. Dangelo, Tax Technician III, Riverside Office

Larry Hanson, Staff Systems Software Specialist III (Technical), Technology Services Department

Irene Johnson, Senior Programmer Analyst (Specialist), Technology Services Department

John Tyler, Data Processing Manager II, Technology Services Department

Thursday, July 15, 2010

Action: Approve the Board Meeting Minutes of May 25-26, 2010.

Action: Adopt property tax forms as presented by staff ([Exhibit 7.8](#)).

#### **ADOPTION OF BOARD COMMITTEE REPORTS AND APPROVAL OF COMMITTEE ACTIONS**

##### **Legislative Committee**

Action: This matter is deferred to August 2010.

##### **Property Tax Committee**

Action: Upon motion of Mr. Horton, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the Property Tax Committee report and the actions therein ([Exhibit 7.9](#)).

#### **OTHER ADMINISTRATIVE MATTERS**

##### **Executive Director's Report**

Kristine Cazadd, Acting Executive Director, reported time extensions to Alpine, Amador, Calaveras, Colusa, El Dorado, Inyo, Lassen, Madera, Placer, Plumas, San Benito, Shasta, Solano, Sonoma, Sutter, Tehama, Trinity and Yuba Counties to complete and submit the 2010/11 Local Assessment Rolls, pursuant to Revenue and Taxation Code section 155 ([Exhibit 7.10](#)).

##### **Property and Special Taxes Deputy Director's Report**

David Gau, Deputy Director, Property and Special Taxes Department, provided an update on the reorganization of the Special Taxes Program. He also reported that he will be moving forward to Human Resources a request for approval of a Career Executive Assignment (CEA II), Division Chief, Special Taxes Appeals, Audit and Motor Carrier Division ([Exhibit 7.11](#)).

Mr. Gau thanked certain members of his staff, as well as staff of the Administration Department and Technology Services Division, for their work on the reorganization. Ms. Yee applauded Mr. Gau's leadership and thanked his staff as well.

The Board agreed to move forward with the request for the CEA II position.

Robert Ingenito, Chief, Research and Statistics Section, Legislative and Research Division, provided staff's recommendation for the tax rate to be applied in 2010-11 to the value of private railroad cars ([Exhibit 7.12](#)).

Action: Upon motion of Mr. Horton, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2010-11 private railroad car tax rate of 1.102 percent as recommended by staff.



Thursday, July 15, 2010

Ken Thompson, Chief, State-Assessed Properties Division, Property and Special Taxes Department, made introductory remarks regarding the 2010 Private Railroad Car Roll ([Exhibit 7.13](#)).

Action: Upon motion of Mr. Horton, seconded by Ms. Steel and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2010 Private Railroad Car Roll.

Ken Thompson, Chief, State-Assessed Properties Division, Property and Special Taxes Department, made introductory remarks regarding the 2010 State-Assessed Property Roll ([Exhibit 7.14](#)).

Action: Upon motion of Ms. Alby, seconded by Mr. Horton and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby and Ms. Steel voting yes, Ms. Mandel not participating in accordance with Government Code section 7.9, the Board adopted the 2010 State-Assessed Property Roll.

### **Administration Deputy Director's Report**

Liz Houser, Deputy Director, Administration Department, made introductory remarks regarding staff's request for approval of the following contracts over \$1 million: *Department of Motor Vehicles (DMV)*, this contract is for DMV's collection of sales and use tax for vehicles and vessels, and collection of other special fees; and, *Office of Chief Information Officer (OCIO)*, this contract is for multiple data processing services from the consolidated data center provided by the OCIO ([Exhibit 7.15](#)).

Action: Upon motion of Mr. Horton, seconded by a Ms. Alby and unanimously carried, Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel voting yes, the Board approved the contracts over \$1 million with DMV and OCIO as recommended by staff.

Liz Houser, Deputy Director, Administration Department, provided an update on the Headquarters Remediation Project and an update on the Headquarters annex locations.

Ms. Yee applauded staff for working diligently on relocating BOE employees to the annex locations.

Liz Houser, Deputy Director, Administration Department, provided information regarding the Governor's 2010/11 Budget, Governor's Executive Orders, State employee furlough, and layoffs.

Liz Houser, Deputy Director, Administration Department, provided a high level overview of the 2011/12 Budget Concepts: *Permanent Establishment of the Statewide Compliance and Outreach Program (SCOP)*; *Enhancing Tax Compliance*; and, *BOE Facilities Masterplan* ([Exhibit 7.16](#)).

Thursday, July 15, 2010

With respect to the SCOP budget concept, Ms. Steel and Mr. Horton requested that the staff be more educated and trained and that this program be more educational for taxpayers of different cultures. Ms. Yee directed staff provide a detailed accounting of where these positions are and the time designation of what their workload is focused on.

### **Technology Deputy Director's Report**

Anna Brannen, Deputy Director, Technology Services Division, discussed a proposed automation project to replace the Board's current automation system: Centralized Revenue Opportunity System (CROS). Ms. Brannen reported that a Career Executive Assignment (CEA III) position would be created to be the Project Director and a request for approval would be forwarded to Human Resources ([Exhibit 7.17](#)).

Ms. Steel directed staff to simplify forms that will be put on the Board's website for taxpayer's use.

The Board agreed to move forward with the request for this CEA III position.

### **ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 10:28 a.m. and reconvened immediately in closed session with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

### **CLOSED SESSION**

The Board met to discuss pending litigation (Gov. Code § 11126(e)), settlements (Rev. & Tax. Code §§ 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Gov. Code § 11126(a)).

The Board recessed at 12:56 p.m. and reconvened immediately in open session with Ms. Yee, Mr. Horton, Ms. Alby, Ms. Steel and Ms. Mandel present.

Diane Olson, Chief, Board Proceedings Division, stated for the record that the Board voted in closed session to award the Cigarette Tax Stamp Contract to SICPA Product Security, LLC. The Department of General Services will complete the procurement process and notify the participants.

The Board adjourned in memory of Senator Dave Cox at 12:58 p.m.<sup>1</sup>

*The foregoing minutes are adopted by the Board on November 18, 2010.*

Note: The following matters were removed from the calendar prior to the meeting: *Shiraz Petroleum Corporation, 465945 (CH)*; and, *Malek S. Naderpour, 465946 (CH)*.

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<sup>1</sup> See minutes of July 13, 2010 for details.